

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SUSAN DANIELLE HALL, ¹	§	
	§	No. 99, 2011
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	Sussex County
	§	
DIVISION OF FAMILY	§	
SERVICES,	§	
	§	
Petitioner Below,	§	
Appellee,	§	
	§	
and	§	
	§	
OFFICE OF THE CHILD	§	
ADVOCATE,	§	File No. 10-05-06TS
	§	Petition No. 10-16688
Appellee.	§	

Submitted: May 26, 2011

Decided: June 16, 2011

Before **HOLLAND, BERGER and JACOBS**, Justices.

ORDER

This 16th day of June 2011, upon consideration of the appellant's opening brief filed pursuant to Supreme Court Rule 26.1, her attorney's motion to withdraw, and the appellees' motions to affirm, it appears to the Court that:

¹ By Order dated February 25, 2011, the Court assigned the pseudonym "Susan Danielle Hall" to the appellant. Del. Supr. Ct. R. 7(d). The Court notes that the parties' submissions reflect a different pseudonym, *i.e.*, "Stephanie Danielle Hall."

(1) Susan Danielle Hall has appealed the Family Court's termination of her parental rights in her seven-year old son, Nate.² On appeal, Hall's counsel ("Counsel") has filed an opening brief and a motion to withdraw pursuant to Supreme Court Rule 26.1³ Counsel submits that he is unable to present a meritorious argument in support of the appeal. Hall has submitted points for the Court's consideration. The Division of Family Services (DFS) and the Office of Child Advocate (OCA) have each moved to affirm the Family Court's judgment.

(2) On September 16, 2007, Hall was arrested for unpaid traffic fines. At the time of her arrest, Hall was living in Laurel, Delaware with her children, Nate, then age three, and his two half-sisters, Nancy, age nine and Karen, age fourteen.⁴ As a result of Hall's arrest and subsequent incarceration, DFS was granted emergency custody, and the children were placed in foster care.

(3) Hall appeared at the September 24, 2007 preliminary protective hearing in the Family Court. At that hearing, counsel was appointed for Hall

² "Nate" is a pseudonym hereby assigned to Hall's son. Del. Supr. Ct. R. 7(d).

³ See Del. Supr. Ct. R. 26.1 (providing for continuing obligation of appellant's trial counsel in appeal from termination of parental rights).

⁴ "Nancy" and "Karen" are pseudonyms hereby assigned to Nate's half-sisters. Del. Supr. Ct. R. 7(d).

and stipulated that there was probable cause to believe that the children were dependent in her care and that custody should remain with DFS.

(4) Hall failed to appear at the November 5, 2007 adjudicatory hearing and at the scheduling/dispositional/review hearings held on December 17, 2007, February 4, 2008, March 3, 2008 and June 2, 2008.⁵ At the November 5, 2007, March 3, 2008 and June 2, 2008 hearings, the Family Court found that DFS was making reasonable efforts at reunification with Hall. At all of the hearings, the Family Court found that the children were dependent.

(5) Between September 2008 and March 2010, the Family Court held permanency hearings at regular intervals.⁶ Over the course of those hearings, the permanency goal for Nate and Nancy remained reunification. For Karen, however, the parties agreed to change the permanency goal from reunification to an “alternate planned permanent living arrangement” because of Karen’s serious mental health issues.⁷

⁵ The record suggests that Hall may have elected not to attend the hearings because she had unpaid traffic fines and was the subject of outstanding capiases. The record reflects that Counsel appeared at the hearings with the possible exception of the June 2, 2008 hearing.

⁶ The permanency hearings took place on September 22, 2008, December 15, 2008, March 30, 2009, June 22, 2009, August 17, 2009, November 9, 2009 and March 1, 2010.

⁷ See Del. Fam. Ct. Civ. R. 216(d) (governing permanency hearing and providing for an “acceptable alternative permanent living arrangement on a case by case basis”).

(6) On August 4, 2009, DFS placed Nate and Nancy in Hall's home on a trial basis. The home placement was cut short, however, when Hall was arrested in mid-September on a Maryland bench warrant and was subsequently incarcerated for a week or more. To further complicate matters, following her incarceration, Hall decided to move to Maryland.⁸ As a result of Hall's move out of state, Nate and Nancy were once again removed from Hall's care and returned to foster care in Delaware pending a required home study and approval from Maryland.

(7) On January 27, 2010, DFS filed a motion to change the permanency goal for Nate and Nancy from reunification to termination of parental rights and adoption. At its final permanency hearing on March 1, 2010, the Family Court learned that Hall had returned to Delaware but was once again incarcerated.

(8) By order dated April 10, 2010, the Family Court granted DFS' motion to change the permanency goal for Nate and Nancy from reunification to termination of parental rights and adoption. On May 18, 2010, nearly two and one-half years after Nate and Nancy were taken into

⁸ Hall testified that she moved to Maryland for a better paying job and for better housing.

DFS custody, DFS filed a termination of parental rights (TPR) petition on the basis of Hall's failure to plan.⁹

(9) In Delaware, terminating parental rights requires a two-step analysis.¹⁰ First, the Family Court must identify a statutory basis for termination under title 13, section 1103 of the Delaware Code.¹¹ Second, the Family Court must determine what is in the best interest of the child.¹² It is incumbent on the petitioner, in this case DFS, to prove, by clear and convincing evidence, the statutory basis for termination and that the best interest analysis favors termination.¹³ Moreover if, as in this case, the termination of parental rights is based primarily on the parent's failure to plan for the child's needs, DFS must prove by clear and convincing evidence that it made *bona fide* reasonable efforts to reunite the family.¹⁴

(10) In this case, the Family Court held a TPR prehearing on August 16, 2010. By order dated August 16, 2010, the Family Court terminated the

⁹ Del. Code Ann. tit. 13, § 1103 (a)(5) (2009).

¹⁰ *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

¹¹ *Id.* at 537. See Del. Code Ann. tit. 13, § 1103(a) (listing grounds for termination of parental rights).

¹² *Shepherd v. Clemens*, 752 A.2d at 537. See Del. Code Ann. tit. 13, § 722(a) (listing best interest factors).

¹³ *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008) (citing *In re Stevens*, 652 A.2d 18, 23 (Del. 1995)).

¹⁴ *Stewart v. Dep't of Serv. for Children, Youth & Their Families*, 991 A.2d 750, 758 (Del. 2010) (citing *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989)).

parental rights of Nate's father due to his failure to appear for any hearing despite having received notice by publication.¹⁵

(11) The Family Court held the TPR hearing on November 22, 2010. At the outset of the hearing, DFS rescinded custody and voluntarily withdrew its TPR petition with respect to Nancy.¹⁶ As a result, DFS proceeded on the petition only as to Hall's parental rights in Nate.¹⁷

(12) By decision dated January 26, 2011, the Family Court granted the TPR petition and terminated Hall's parental rights in Nate. The Family Court concluded, first, that DFS had proven by clear and convincing evidence that Hall's parental rights should be terminated on the basis of her failure and inability to adequately plan for Nate's physical needs and emotional health and development. In connection with that conclusion, the

¹⁵ The August 16, 2010 order terminated the parental rights of Nate's father "only if the parental rights of [Hall] are also terminated."

¹⁶ The record reflects that DFS relinquished custody of Nancy to the joint custody of Nancy's father and Hall, with primary placement of Nancy with her father and visitation with Hall.

¹⁷ The Family Court heard testimony from Nate's therapist, Stuart Johnson, DFS worker, Julie Schirmer, Nate's foster mother, Violet Waters, and Hall. Fairly summarized, Johnson testified that Nate had been diagnosed with ADHD and suffered from PTSD caused, in part, by having witnessed Hall's arrest on at least two occasions and from his separations from Hall. Schirmer testified that Hall had not recently had visits, was not employed and did not have suitable housing, all due to her incarceration. Waters testified as to Nate's behavior and attitude, both of which had improved over time but continued to pose formidable challenges. Hall testified that once she is released from incarceration in Delaware, she will have to address criminal charges in Maryland for which she may be incarcerated. Hall testified as to the various programs she has taken in prison and her goals, including the return of her children. Hall also testified that she has mental health issues and is presently taking medication for bipolar disorder.

Family Court found that there was clear and convincing evidence demonstrating that DFS had made reasonable efforts to assist Hall in reunification. The Family Court concluded, second, that DFS had shown by clear and convincing evidence that termination of Hall's parental rights was in Nate's best interest. This appeal followed.

(13) This Court's review of a Family Court order terminating parental rights involves consideration of the facts and the law.¹⁸ To the extent the issues implicate rulings of law, our review is *de novo*.¹⁹ To the extent the issues implicate rulings of fact, we conduct a limited review of the factual findings to assure that they are sufficiently supported by the record and are not clearly wrong.²⁰ The Court will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.²¹ If the Family Court has correctly applied the law, our review is limited to abuse of discretion.²²

(14) On appeal, Hall contends that her successful completion of several components of the case plan demonstrated that she is foreseeably capable of reunification with Nate. Hall's claim is without merit. The

¹⁸ *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439 (Del. 2010).

¹⁹ *Id.* at 440.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Family Court concluded, and we agree, that notwithstanding her successful completion of certain elements of the case plan, Hall's repeated incarcerations, the resulting loss of housing and employment, the likelihood of future incarceration, and Hall's lack of attention to her own mental health needs, together demonstrated a failure to discharge her parental responsibilities.²³

(15) Next, Hall contends that it was in Nate's best interest to reunite with Hall, and that the Family Court failed to give the proper weight to Nate's strong desire for reunification. Hall's claim is without merit. The record reflects that the Family Court carefully considered the best interest factors, including Nate's clear desire to reunite with Hall, and made factual findings that guided its decision. In the end, Nate's wishes, although duly considered by the Family Court, could not overcome the evidence relied on by the court when concluding that it was in Nate's best interest to terminate Hall's parental rights.²⁴

²³ "[T]he relevant inquiry is '[w]hether the conditions that led to the child's placement . . . continue to exist and there appears to be little likelihood that these conditions will be remedied at an early date which would enable the respondent to discharge parental responsibilities so that the child can be returned to the respondent in the near future.'" *Powell v. Div. of Family Serv.*, 2011 WL 252950, ¶ 6 (Del. 2011) (quoting Del. Code Ann. tit. 13, § 1103(a)(5)a.5.A).

²⁴ "It is well-established that the Family Court may assign different weights to the various best interests factors, and that in some cases one factor may counterbalance or even outweigh the rest." *Clark v. Div. of Family Serv.*, 975 A.2d 813, 822 (Del. 2009) (citing *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997)).

(16) Having carefully reviewed the parties' positions and the record, the Court concludes that there is clear and convincing evidence supporting the Family Court's termination of Hall's parental rights on the statutory basis of her failure to plan for Nate's physical needs and emotional health and development. The record also supports the Family Court's findings that DFS made *bona fide* reasonable efforts to reunite Hall with Nate, and that ultimately the termination of Hall's parental rights was in the best interests of Nate. Having discerned no abuse of discretion in the Family Court's factual findings and no error in the court's application of the law to the facts, the Family Court's judgment shall be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice